

REMARKS

Claims 1-41 are pending, with claims 1 and 4-41 having been withdrawn from further consideration. By the present Communication, claims 1, 2 and 4-41 have been canceled without prejudice and claim 3 has been amended to define Applicant's invention with greater particularity. The amendments do not raise any issues of new matter and the amended claims do not present new issues requiring further consideration or search. Accordingly, upon entry of this communication, claim 3 will be under consideration.

Restriction Requirement

The Examiner has not found persuasive Applicants' arguments against the restriction of each of the claimed sequences, and has deemed the restriction requirement proper. Applicants respectfully traverse the Examiner's decision to treat the election without traverse because Applicants allegedly did not distinctly and specifically point out the supposed errors in the restriction requirement. In the response to the Restriction Requirement filed on December 19, 2005, Applicants indicated that "the sequences of claim 1 are all related, both structurally and functionally. For example, SEQ ID NOs: 3-12 all share extensive sequence homology, and at the very least, contain conservative variations in sequence." Applicants further indicated that "all of SEQ ID NOs: 3-12 and 14-21 are functionally related by having antimicrobial activity." As such, Applicants submit that it would not pose an undue burden upon the Examiner to search more than one sequence in claim 1.

Accordingly, Applicants submit that the response has distinctly and specifically pointed out the supposed errors in the restriction requirement, and have therefore retained the right to petition from the requirement under 37 C.F.R. §1.144. Applicants intend to file a petition with the Commissioner seeking rejoinder of SEQ ID NOs: 3-12 under M.P.E.P. §803.04, which reads in part,

to further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Director has decided *sua ponte* to partially waive the requirements of 37 CFR 1.141 *et seq.* and permit a reasonable number of...nucleotide sequences to be claimed in a single application.

It has been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction.

As such, Applicants respectfully request that **SEQ ID NOs: 3-12** are considered for prosecution in this application.

Objection to the Oath/Declaration

Applicants respectfully traverse the objection to the Oath/Declaration as allegedly containing non-initialed and/or non-dated alterations by an inventor. However, in order to reduce the issues and further prosecution, Applicants provide herewith a newly executed Oath/Declaration. Withdrawal of the objection is respectfully requested.

Objection to the Specification

Applicants respectfully traverse the objection to the specification due to alleged informalities.

Specifically, the Examiner alleges that the ATCC address disclosed in paragraph [0022] is incorrect. In order to reduce the issues and further prosecution, Applicants have amended the ATCC address to "Manassas, VA" as suggested by the Examiner.

The Examiner further alleges that the priority information needs to be updated. Applicants have updated the priority information, and note that the Examiner incorrectly referred to Application No. 09/143,139 twice. The first application listed should be 09/908139, which is now U.S. Patent No. 6,818,407.

The Examiner further alleges that the title is not descriptive. In order to reduce the issues and further prosecution, Applicants have amended the title as suggested by the Examiner.

The Examiner further alleges that typographical errors appear throughout the specification. In order to reduce the issues and further prosecution, Applicants have amended the specification to correct all typographical errors.

Accordingly, Applicants respectfully request withdrawal of the objections to the specification.

Objection to the Specification

Applicants respectfully traverse the objection to claim 2 as allegedly depending from a non-elected claim. However, in order to reduce the issues and further prosecution, Applicants have canceled claim 2, rendering the objection moot. Accordingly, withdrawal of the objection is respectfully requested.

Rejection under 35 U.S.C. §112, First Paragraph

Applicants respectfully traverse the rejection of claims 2 and 3 under 35 U.S.C. §112, first paragraph, as allegedly containing subject matter that was not described in the specification in such a way as to convey to one skilled in the art that the inventors were in possession of the invention at the time the application was filed. Applicants have canceled claim 2, rendering the rejection moot as to that claim. Accordingly, the claimed invention no longer includes analogs, derivatives, amidated variations and conservative variations of the sequences. Applicants submit that the specification as filed fully supports the claimed invention, and respectfully request withdrawal of the rejection.

Rejection under 35 U.S.C. §102

Applicants respectfully traverse the rejection of claims 2-3 under 35 U.S.C. §102 as allegedly being anticipated by WO96/28559 (hereinafter "the '559 Application"). Specifically, the Examiner alleges that the '559 Application teaches a method for the microbial production of a cationic peptide, and teaches SEQ ID NO: 24, which is allegedly identical to SEQ ID NO: 6 of the present application. Applicants have canceled claim 2, rendering the rejection moot as to that claim. In order to reduce the issues and further prosecution, Applicants have amended claim 3 to limit the claimed polynucleotides to those which encode a peptide selected from the group consisting of SEQ ID NOs: 3-5 and 7-12. Anticipation under 35 U.S.C. § 102(b) requires that the reference recite each and every element of the claims in a single document. Since the '559

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Application is absolutely silent with regard to SEQ ID NOs: 3-5 and 7-12, Applicants respectfully submit that the '559 Application fails to anticipate the invention as claimed under 35 U.S.C. §102 (b). Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Double Patenting Rejection

Applicants respectfully traverse the rejection of claims 2 and 3 under 35 U.S.C. §101 as allegedly claiming the same invention as that of claim 2 of U.S. Patent No. 5,707,855. Applicants have canceled claim 2, rendering the rejection moot as to that claim. In order to reduce the issues and further prosecution, Applicants have amended claim 3 to limit the claimed polynucleotides to those which encode a peptide selected from the group consisting of SEQ ID NOs: 3-5 and 7-12. Accordingly, withdrawal of the rejection is respectfully requested.

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Conclusion

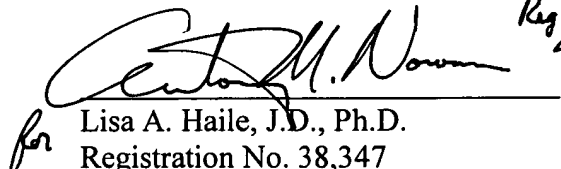
In summary, for the reasons set forth herein, Applicants submit that claim 3 clearly and patentably defines the invention, and respectfully request that the Examiner withdraw all rejections and pass the application to allowance. If the Examiner would like to discuss any of the issues raised in the Office Action, the Examiner is encouraged to call the undersigned so that a prompt disposition of this application can be achieved.

Check number 582654 in the amount of \$60.00 is enclosed as payment for a one-month Petition for Extension of Time fee. No additional fee is believed due in connection with the filing of this response. However, in the event that any additional fee is due, the Commissioner is hereby authorized to charge any amounts required by this filing, or credit any overpayment, to Deposit Account No. 07-1896 referencing the above-identified attorney docket number. A duplicate copy of the Transmittal Sheet is enclosed.

The Examiner is invited to contact Applicant's undersigned representative if there are any questions relating to this application.

Date: July 18, 2006

Respectfully submitted,


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